

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-14 are pending. Claims 15-28 are canceled without prejudice or disclaimer, and Claims 1, 2, 4, and 7-13 are amended.

Before discussing the outstanding objections to the claims, applicant, through its undersigned representatives, wish to thank the examiners for the courtesy of the personal interview conducted March 31, 2004. During the interview, arguments substantially as hereinafter were presented, and the examiners indicated that the proposed clarifying changes to the claims would appear to place the claims in a form that would overcome the outstanding objections and rejections. However, no agreement was made with respect to the ultimate patentability of the application, pending applicant's submission of a formal response and the examiners' further consideration and search.

In the outstanding office action, Claims 1-14 were objected to for using the word "making." In response, applicant has amended the claims to eliminate the language found objectionable by the examiner. Additionally, Claim 1 is rewritten as proposed during the interview so that the method steps correspond to the steps performed by the digital content retailer. As explained below, this is believed to further distinguish the claimed invention from the references applied in the outstanding office action. Additionally, applicant has amended the claims to include several clarifying changes that include the suggestions made by the examiners during the interview.

On pages 2-14 of the outstanding office action, Claims 1-6, 9, and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Austin in view of Egawa; Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Austin in view of Egawa and

further in view of Reisman; Claims 8, 11, 12, and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Austin and Egawa and further in view of Bernard; and Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Austin in view of Egawa and further in view of Spagna. Applicant respectfully traverses these rejections on the ground that none of the applied references, when considered alone or in any proper combination, anticipate or make obvious amended Claims 1-14.

As presently amended Claim 1 is directed to a digital content downloading method using a network in which digital content is downloaded. The method includes the steps of (a) "providing from the digital content retailer the desired digital content designated by the information, to the consumer through the network reserved by the digital content retailer at the desired digital content transmission condition sent from the consumer"; (b) "collecting from the consumer, with the digital content retailer, a charge for the desired digital content, the charge including a transmission charge corresponding to the desired digital content transmission condition"; and (c) "paying, with the digital content retailer, the transmission charge to the network operator." Consistent with the examiner's description of Austin on page 2 of the outstanding Office action, applicant submits that Austin does not teach or suggest these steps (a), (b), and (c). Accordingly, Austin is not believed to anticipate or make obvious the invention of Claim 1.

The Egawa reference discloses a network resource reservation system. As shown in Figure 7, the resource reservation system includes an interface for receiving reservation request from user networks. The system also includes an admission controller that is connected to the interface and is responsive to reservation requests. The admission controller accesses various databases to verify the availability of requested resources and to inform the users as to the results of the verification. The interface, admission control, and databases of Egawa are merely parts of the reservation system of the network and do not correspond to the

digital content retailer, as recited in the claims of the present invention. Thus, it can be appreciated that Egawa does not teach or suggest the above-described steps (a), (b), and (c) which are performed by a digital content retailer. Accordingly, Egawa, when considered alone or in combination with Austin, is not believed to anticipate or make obvious the invention of Claim 1.

The Reisman reference is directed to various methods for transacting electronic commerce. Columns 59 and 60 of Reisman describe an "Online Network Charging Mechanism." In one example, the Network Charging Mechanism works by using a "charge-management module" as a higher level protocol above the TCP/IP protocols. Col. 60, lines 6-11. This module, "determine[s] if a called server will accept charges before the call is completed." Col. 60, lines 14-15. "Hosts that accept collect calls can have an option of selectively controlling access to specific account IDs." Col. 60, lines 16-17. The system is designed to "generate bills and call details for the sponsor [of an Internet site]," and "[t]he sponsor or sever components screens and authorizes or rejects call request received from the access point." Col. 60, lines 25-27. Thus, the system provides a collect call system where "Hosts that accept collect calls can have an option of selectively controlling access to specific account IDs." Col. 60, lines 16-17. Alternatively, the "billing servers can allocate a caller's account and credit status, identify the pricing algorithms to be applied for the called server and maintain an activity record for end-user billing." Col. 60, lines 36-39. This alternative is described as a "900-number equivalent." Col. 60, line 33.

Nowhere in columns 59 and 60 of the Reisman reference is there any teaching or suggestion that the digital content retailer collects from the consumer a charge for the desired digital content that includes a transmission charge corresponding to the desired digital content transmission condition, as recited in Claim 1. This is because the network described on columns 59 and 60 operates in either a collect call mode or a 1-900 number mode. There is

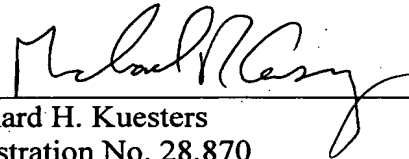
no digital content retailer in Reisman that performs the steps (a), (b), and (c) of Claim 1. With Reisman, the billing servers maintain an activity record for end-user billing and there is no discussion of a transmission charge of a digital content retailer that corresponds to a desired digital content transmission condition.

Accordingly, applicant submits that Reisman, when considered alone or in combination with Austin and/or Egawa, fails to anticipate or make obvious the invention of Claim 1. Likewise, the other applied references, which are applied as teaching various features of the dependent claims, fail to account for the deficiencies of Austin and Egawa.

Therefore, claim 1 and all claims dependent therefrom (claims 2-14) are believed to patentably distinguish over the applied references. In view of the foregoing, the present application is therefore believed to be in condition for formal allowance, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters
Registration No. 28,870
Robert C. Mattson
Registration No. 42,850

Michael R. Casey, Ph.D.
Registration No. 40,294

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/03)